



ESTABLISHING WHETHER THERE HAS BEEN AN AGGRAVATION TO A PRE-EXISTING OR UNDERLYING MEDICAL CONDITION UNDER THE SRC ACT

PURPOSE

To provide scheme guidance on determining liability for an aggravation of an injury (other than a disease) and an ailment under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

BACKGROUND

Determining whether an employee has sustained an aggravation of a pre-existing¹ or underlying² medical condition is an important consideration of the initial liability process. A claim is not automatically disallowed if an employee has a non-compensable pre-existing or an underlying condition, or a predisposition³ toward the claimed condition. An aggravation can occur in respect of an injury (other than a disease) or an ailment⁴, regardless of whether the pre-existing or underlying condition is compensable or non-compensable.

Several court decisions have considered the meaning of aggravation under the SRC Act. These cases may assist decision makers when assessing whether a claimed condition is an aggravation.

This guidance outlines what a decision maker should consider when assessing liability under section 14 of the SRC Act for an aggravation of an injury (other than a disease) or an aggravation of an ailment.

GUIDANCE

Meaning of aggravation under the SRC Act

Section 4(1) of the SRC Act defines aggravation to include an 'acceleration'⁵ or 'recurrence'.⁶

The courts have established a distinction between the appearance of an existing condition in the workplace, and its worsening as a result of the workplace.⁷ An 'aggravation' arises where an existing condition has been made worse, as opposed to an existing condition simply becoming worse due to its natural progression.⁸ Importantly, the decision maker must be satisfied that the employee suffers from an existing condition, before they can find that the employee has sustained an aggravation of an injury (other than disease) or ailment.⁹

1 A 'pre-existing' condition is not defined in the SRC Act, however, 'pre-existing' is defined in the Macquarie Dictionary to mean 'existing beforehand'. A pre-existing condition is therefore a medical condition that existed before the onset of the claimed condition.

2 An 'underlying' condition is not defined in the SRC Act, however, 'underlying' is defined in the Macquarie Dictionary to mean 'existing beneath the apparent aspect of'. An underlying condition is therefore a medical condition that may be hidden by something more obvious.

3 A 'pre-disposition' is not defined in the SRC Act, however is defined in the Macquarie Dictionary to mean 'the condition of being particularly susceptible to a certain disease'.

4 Sections 5A(1)(c) and 5B(1) of the SRC Act.

5 The courts have found an acceleration 'connotes the hastening of the normal underlying disease.' See *Casarotto v Australian Postal Commission* [1989] FCA 116 [23].

6 Recurrence is when there is a re-emergence or worsening of symptoms in a pre-existing condition.

7 *Tippet v Australian Postal Corporation* [1998] FCA 335.

8 *Ogden Industries Pty Ltd v Lucas* [1967] HCA 30 [29].

9 *Comcare v Stefaniak* [2020] FCA 560 [6].

Characterising an aggravation

Decision makers should consider the guiding principles that have been identified in judicial decisions when assessing liability for an aggravation of an underlying or pre-existing injury (other than a disease) or ailment. These guiding principles include that:

- > physiological change is not a necessary pre-condition in order to establish that an aggravation of an underlying or pre-existing injury (other than a disease)¹⁰ or ailment¹¹ has been sustained; and
- > an increase or intensification in symptoms brought on by a work-related activity may be sufficient to amount to an aggravation of an underlying or pre-existing injury (other than a disease) or ailment for the purposes of the SRC Act, even though no pathological changes take place.¹²

In some circumstances it can be difficult to establish whether subjectively reported symptoms during a work activity constitute an aggravation of a pre-existing or underlying condition. This will depend on the circumstances of each case. Decision makers should always seek factual and medical information to assist them to determine whether there is enough evidence to support the existence of an aggravation, as defined in the SRC Act.

Connection to employment

Where factors in employment and outside of employment cause an employee with a pre-existing or underlying condition to experience symptoms, the decision maker will need to establish that something has occurred in employment that has caused a worsening of symptoms. This will assist the decision maker to be satisfied that the aggravation of the injury (other than a disease) arose out of, or in the course of, the employee's employment or the aggravation of the ailment was contributed to, to a significant degree, by the employee's employment. Guidance on how to assess whether the requisite connection with employment has been met for aggravation claims is provided below.

Example one – pain caused by the pre-existing condition regardless of work activities

An employee fractures their ankle while completing an activity that was not related to their employment. The employee is unable to weight-bear without significant discomfort and is required to wear a moonboot and use crutches for a period of 6 to 8 weeks.

The employee's treating doctor confirms that the employee's pre-existing fracture to their ankle causes them the same level of disability and pain regardless of the activities they undertake at work or outside of work.

The decision maker determines that the pain the employee experiences at work is a result of the pre-existing condition itself, and their experience of that condition was not increased or intensified by their work activities. The decision maker finds that the employee's pre-existing condition was not aggravated by their employment.

Aggravation of an injury (other than a disease)

For an injury (other than a disease) to be compensable, it must have arisen out of, or in the course of, the employee's employment (section 5A(1) of the SRC Act).¹³

When assessing an aggravation of an injury (other than disease), decision makers must consider whether:

- > There is an acceleration or recurrence of symptoms of a pre-existing or underlying condition, that has arisen out of, or in the course of, the employee's employment.
- > There is an increase in symptoms that have been made worse by employment rather than simply becoming worse due to the natural progression of the pre-existing or underlying condition.

¹⁰ *Commonwealth v Beattie* [1981] 53 FLR 191.

¹¹ *Wuth v Comcare* [2022] FCAFC 42 [104 – 11].

¹² *Federal Broom Co Pty Ltd v Semlich* [1964] 110 CLR; *Commonwealth v Beattie* [1981] 53 FLR 191; *Tippet v Australian Postal Corporation* [1998] FCA 88.

¹³ See Scheme Guidance [Injury arising out of or in the course of employment](#).

Example two – aggravation of an injury (other a than disease)

An employee has a pre-existing right shoulder rotator cuff injury sustained because of a lifting incident outside of work. The pre-existing rotator cuff injury is asymptomatic until the employee lifts a box when moving to another desk as part of a restructure at work. As a result of the work-related incident, the employee requires anti-inflammatory medication, physiotherapy and time off work.

The employee undergoes medical imaging which does not show any pathological change to their pre-existing rotator cuff injury. Despite this, the employee's treating doctor says that the employee's pre-existing injury has become symptomatic because of lifting the box at work. The decision maker determines that the employee has sustained an aggravation of their pre-existing rotator cuff injury because of the incident at work.

Aggravation of an ailment

For an aggravation of an ailment to be compensable, it must be contributed to, to a significant degree, by the employee's employment (section 5B(1) of the SRC Act).¹⁴

When assessing an aggravation of an ailment, decision makers must consider whether:

- > The employee suffers from a pre-existing or underlying condition that meets the statutory definition of ailment.
- > There is an acceleration or recurrence of symptoms, that have been contributed to, to a significant degree by employment, with reference to the matters listed in section 5B(2) of the SRC Act.¹⁵ Where the aggravation is contributed to by employment and non-employment related factors, employment factors (considered independently of non-employment factors) must have contributed to the aggravation to a significant degree for it to be compensable under the SRC Act.
- > There is an increase in symptoms that have been made worse by employment rather than simply becoming worse due to the natural progression of the pre-existing or underlying condition.

Example three – aggravation of an ailment significantly contributed to by employment

An employee has a pre-existing major depressive disorder and takes a low dosage of antidepressant medication daily to help manage their symptoms.

The employee works as a receptionist at a dental clinic. One day at work, the employee is verbally abused and threatened by a customer who is angry about their dentist running behind schedule. The employee's general practitioner says that the employee has experienced a worsening of their depressive symptoms because of the confrontation with an aggressive customer and that they require time off work, an increase in antidepressant medication and treatment with a psychologist. The employee's general practitioner says that no non-work related factors have contributed to the aggravation of the employee's major depressive disorder.

The decision maker finds that the employee has sustained an aggravation of major depressive disorder which was significantly contributed to by employment.

¹⁴ See Scheme Guidance [Definition of injury and disease](#).

¹⁵ The matters listed in section 5B(2) include:

- > the duration of the employment;
- > the nature of, and particular tasks involved in, the employment;
- > any predisposition of the employee to the disease;
- > any activities of the employee not related to his or her employment; and

any other matters affecting the employee's health.

Acceleration

The SRC Act includes 'acceleration' in the definition of 'aggravation'.¹⁶ An 'acceleration' in this context involves the 'quickenning' or 'speeding up' of the natural progression of an underlying or pre-existing pathological process because of an employment-related incident.⁵ To establish liability for an acceleration, the medical information must support that the employee has an underlying or pre-existing condition (which is usually progressive in nature), and an employment-related factor or factors caused the existing condition to become evident before it would have been noticed by the employee or caused the condition to become apparent sooner than reasonably expected.

Example four – acceleration of a pre-existing degenerative disease

An employee suffers from mild underlying osteoarthritis in their lumbar spine which causes minimal symptoms and does not require treatment. The employee starts working as a police officer and is required to wear a heavy body armour vest daily. Over a period of ten months the employee notices an increase in pain and stiffness in their lumbar spine which impacts on their day-to-day activities.

The employee's specialist completes a medical examination and arranges an MRI scan of the lumbar spine which shows that the employee has had further degeneration within the lumbar spine. The specialist says that the excessive weight from the body armour vest added stress to the employee's spine and caused the underlying osteoarthritis to manifest sooner.

The decision maker finds that the underlying osteoarthritis has been accelerated by an employment factor and accepts liability for aggravation of osteoarthritis of the lumbar spine.

Recurrence

The SRC Act includes 'recurrence' in the definition of 'aggravation'.¹⁷ A 'recurrence', occurs where symptoms of a pre-existing condition suddenly re-emerge.

Recurrence of non-compensable condition

Whether a 'recurrence' of a non-compensable condition is related to work or not will depend on the evidence and the circumstances of the case. Where an employee has a re-emergence of symptoms in a non-compensable pre-existing condition and there is an identifiable trigger that has the required nexus with employment, a 'recurrence' has likely occurred and liability for an aggravation will be found.

Example five – recurrence of a non-compensable pre-existing condition

An employee suffers from pre-existing constitutional dermatitis that has previously been well controlled. Not long after the employee commences work as a butcher, they experience a worsening of dermatitis on their hands and become incapacitated for work.

The employee's treating dermatologist attributes the worsening of the employee's symptoms to the nature of the employee's role which involves wearing rubbers gloves, using irritating substances and having prolonged wet hands.

The decision maker determines that the employee has experienced a recurrence of their dermatitis on their hands due to the nature of their employment.

¹⁶ Section 4(1) of the SRC Act.

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Where symptoms of a pre-existing non-compensable condition re-emerge or worsen spontaneously or without a specific trigger that is related to the employee's employment, the symptoms likely relate to the ongoing effects of the pre-existing non-compensable condition and liability will not be established.

Example six – ongoing effects of a non-compensable pre-existing condition

An employee suffers from pre-existing non-compensable generalised anxiety disorder that has been controlled with psychiatric medication and regular treatment with a psychologist and psychiatrist. The employee makes the decision to stop taking their medication and attending appointments with their psychologist and psychiatrist without obtaining medical advice.

The employee notices their symptoms of anxiety have increased when at work and while completing non-employment related activities. The employee submits a claim for compensation for time off work because of the increase in their anxiety symptoms.

The treating psychiatrist says that the employee has experienced an increase in anxiety symptoms due to stopping medication and psychiatric treatment. The decision maker is unable to identify a trigger that is related to the employee's employment and determines that the employee has experienced a recurrence of their non-compensable generalised anxiety disorder due to ceasing medical treatment for this condition. The decision maker declines liability for the claim.

Recurrence of compensable condition

A recurrence of a compensable pre-existing condition can occur when symptoms re-emerge spontaneously because of the ordinary stresses and strains experienced during activities of daily living¹⁸ or due to employment related factors.

When assessing how the re-emergence of symptoms occurred, a decision maker should consider whether:

- > there is a continuation of the pre-existing symptoms resulting from the original injury; or
- > a new causative factor or fresh injury has occurred to break the link between the original injury and subsequent recurrence of symptoms.

If a decision maker is unable to identify a trigger causing a re-emergence of symptoms and the medical information supports that the current symptoms are due to the original compensable injury, it is likely a continuation of the compensable injury and liability to pay further compensation will fall back on the initial claim.

Where the symptoms from the original compensable injury have ceased or become clinically insignificant and the medical information supports that:

- > a new identifiable employment-related trigger has intervened to break the link between the original injury and subsequent incapacity or need for medical treatment, and has caused a worsening of symptoms, the injury should be treated as a new claim;
- > a new identifiable non-employment trigger has intervened to break the link between the original compensable injury and subsequent incapacity or need for treatment, and has caused a worsening of symptoms, liability is unlikely to be established.

¹⁸ *Australian Postal Corporation v Nadge* [1994] FCA 1163 [29].

Example seven – continuation of a compensable condition during activities of daily living

An employee has an accepted claim for a lumbar spine injury for which the symptoms have not completely resolved. One day the employee is in the shower and bends down to pick up a bottle of shampoo. The action of bending over was not excessive and was part of a normal activity of daily living.

The employee experiences an increase in the severity of symptoms in the same location of their lower back after bending to pick up a bottle of shampoo. As the employee experienced increased symptoms because of the ordinary stresses and strains of daily living, it is likely any liability to pay further compensation falls back to the existing claim if it is confirmed that the employee's current symptoms are due to the original injury.

Considerations when assessing an aggravation

Evidence to assist claim determination

To assess whether an employee has sustained an aggravation, a decision maker should obtain relevant medical information from a legally qualified medical practitioner (LQMP) or medical provider. This may include, but is not limited to:

- > the clinical notes in relation to the underlying or pre-existing condition, including entries prior to and post the claimed condition;
- > diagnostic tests or investigations concerning the employee's underlying or pre-existing condition (including pre and post injury);
- > medical reports from the employee's treatment providers;
- > an independent medical examination with an LQMP from a relevant field.

When assessing whether an employee has sustained an aggravation, a decision maker must have regard to the facts of the claim and medical information, including but not limited to:

- > an employee's condition prior to and after the claimed aggravation;
- > any pathological changes that may have taken place to the employee's underlying or pre-existing condition and the cause of any changes;
- > whether the employee was symptomatic or asymptomatic prior to the claimed aggravation;
- > the natural progression, extent, or severity of the underlying or pre-existing condition and whether any increase in symptomology is consistent with the persistent effects or enduring nature of the existing condition;
- > whether the existing condition fluctuates in symptomology;
- > whether there is a change in the employee's capacity for work, treatment needs and/or ability to participate in usual recreational/leisure and activities of daily living.

Fluctuation of symptoms

There are some conditions that fluctuate in symptomology. For example, an employee may experience an increase of symptoms from time to time that are part of the natural waxing and waning or enduring effects of their underlying or pre-existing condition. An increase in symptoms does not automatically mean an employee has suffered an aggravation of an existing condition that constitutes a new 'injury' under the SRC Act.

If an employee with an existing compensable or non-compensable condition provides notification for an aggravation, the decision maker should carefully consider the medical information and facts of the claim to establish whether:

- > the employee merely experienced an increase of symptoms while at work;
- > the increase in symptoms in the existing condition resulted in the need for increased/changes in medical treatment or incapacity;
- > there is evidence to support that the existing condition fluctuates in symptomology regardless of any employment factors;
- > the increase in symptomology is consistent with the persistent effects or enduring nature of the existing condition.

Example eight – existing conditions that fluctuate in symptomology

An employee has an underlying arthritic condition in their thumbs and experiences increased pain when handling money at work. They submit a claim for an aggravation of their underlying arthritic condition.

The employee's treating doctor states that they are not incapacitated by the increased pain and the effects resolve with rest. They also do not require any increase in medication or further medical treatment. Their treating doctor says that the employee also experiences increased pain in their thumbs when completing activities of daily living such as washing their hair, cooking, and cleaning.

The decision maker determines the employee's pre-existing arthritic condition was not made worse by employment, rather the pain they experienced at work was the result of the condition itself and its natural waxing and waning. The decision maker finds there was no aggravation of the employee's underlying condition.

Duration of an aggravation

Where it has been established that employment has aggravated an employee's pre-existing or underlying condition, compensation is payable for the duration of the aggravation. The duration of an aggravation may vary. Some aggravations can be permanent, and the employee may continue to be entitled to compensation for the foreseeable future, whereas other aggravations may only be temporary in nature before returning to the pre-existing or underlying condition's baseline level that existed prior to the compensable condition.

A decision maker should seek medical information to clarify the employee's baseline level of severity prior to the aggravation, the expected treatment needs to treat the aggravation, and the expected duration of the aggravation to assist with the management of the claim.

MORE INFORMATION

For more information, please contact Comcare's Scheme Policy team on 1300 366 979 or email: SchemePolicyandDesign@comcare.gov.au.

Other relevant scheme guidance:

- > [Injury arising out of or in the course of employment](#)
- > [Definition of injury and disease](#)